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In re : DEC 31 2007
Application No. 10/823,473 : **OFFICE OF PETITIONS**
Masamichi : LETTER REGARDING
Filed: April 13, 2004 : PATENT TERM ADJUSTMENT
Attorney Docket No. 9281-4799 :

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed September 17, 2007. Applicant discloses that the patent term adjustment pursuant to 35 U.S.C. 154(b) of 475 days indicated on the Determination of Patent Term Adjustment should be 280 days as the present application is subject to two terminal disclaimers.

The request for review of the patent term adjustment (PTA) is DISMISSED to the extent that it requests correction of the patent term adjustment.

On June 22, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 475 days. Applicant requests correction to the patent term adjustment on the basis that the application is subject to two disclaimers and that the patent term adjustment in each of the relevant patents is 280 days. Further, this application was filed on the same date as one of the applications (now patents) to which a terminal disclaimer was filed.

A review of the application history supports a conclusion that the initial Determination of Patent Term Adjustment is correct. It is noted that the terminal disclaimers were filed in this application on June 20, 2007. This has no effect on the determination of patent term adjustment set forth on any patent issuing from this application. 35 U.S.C. 154(b)(2)(B) provides that:

No patent the term of which has been disclaimed beyond a specified date may be adjusted under this section beyond the expiration date specified in the disclaimer.

37 CFR § 1.703(g) provides that:

No patent, the term of which has been disclaimed beyond a specified date, shall be adjusted under § 1.702 and this section beyond the expiration date specified in the disclaimer.

The provisions of § 154(b), for adjustment due to examination delay, apply to original applications, other than designs, filed on or after May 29, 2000. The Office calculates patent term adjustment for examination delay in all eligible applications. In calculating the patent term adjustment, the Office does not differentiate between applications that have terminal disclaimers and those that do not. Nor does the Office undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 CFR § 1.703(g), it is indicated in the patent that the patent term adjustment indicated therein is subject to any disclaimer. Moreover, it is also stated therein that the patent is subject to a terminal disclaimer.

As this letter was submitted as an attempt to advise the Office of an error in Applicant's favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



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